Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services	)	WT Docket No. 03-103
	)	
Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission's Rules	)	
	)	
Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service	)	WT Docket No. 05-42
	)	
Application of Verizon Airfone, Inc. for Renewal of 800 MHz Air-Ground Radiotelephone License, Call Sign KNKG804	)	File No. 001716212

REPLY COMMENTS OF VERIZON AIRFONE INC.

The Commission should not adopt bidding credits for designated entities in the air to ground (ATG) auction. The nationwide, cost-intensive nature of the ATG service requires the auctioning of spectrum licenses without bidding credits. AirCell and Space Data have not provided any meaningful factual foundation for the bidding credits suggested in the NPRM, let alone for the increased bidding credits they seek. Moreover, the cases that Space Data and AirCell cite to support bidding credits in the ATG auction are inapposite. Accordingly, the Commission should not provide bidding credits to designated entities in the ATG auction.

I. BIDDING CREDITS ARE INAPPROPRIATE FOR THE ATG SERVICE

In determining whether bidding credits are appropriate in spectrum auctions, the Commission first evaluates the likely characteristics of the service – whether a service is likely to be provided on a nationwide or more localized basis.[1] Second, the Commission evaluates the likely capital requirements of the specific service.[2] The need for extensive amounts of capital to fund the development of a new wireless service or to finance the upfront costs associated with the purchase of an auctioned license is a critical ingredient in the agency's review of the need for bidding credits.

The Commission's analysis is consistent with the statute and with Congressional intent. Section 309(j) of the Act directs the Commission to promote "the development and rapid deployment of new technologies, products, and services for the benefit of the public."[3] Space Data ignores this language, and points to language that directs the Commission to "ensure that small businesses … are given the opportunity to participate in the provision of spectrum-based services" and identifies the use of bidding preferences as one means for achieving that objective.[4] As the Commission has noted, however, providing designated entities access to spectrum licenses, including through the use of bidding credits, is only one of a number of objectives Congress wished to promote through spectrum auctions and each objective must be considered with all others.[5]

---

[1] *See e.g., Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use,* Third Report and Order and Second Further Notice of Proposed Rulemaking, 13 FCC Rcd 374, 388, ¶ 18 (1997).

[2] *See e.g., Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Dkt No. 93-253, *Second Memorandum Opinion and Order*, 9 FCC Rcd 7245, 7269, ¶145 (1994).

[3] 47 U.S.C. § 309(j)(3)(A) (2005).

[4] *See* Space Data Comments at 4 (citing 47 U.S.C. § 309(j)(4)(D)).

[5] *See e.g., Revision of Rules and Policies for the Direct Broadcast Satellite Service*, Report and

As the legislative history makes clear, Congress recognized that bidding credits or other such special measures are not appropriate for all services: "The characteristics of some services are inherently national in scope, and are therefore ill-suited for small businesses."[6] As a result, the Commission in the past has "declined to adopt provisions for designated entities for certain services…which have extremely high implementation costs."[7]

For example, in the Direct Broadcast Satellite Service ("DBS") auction, the Commission concluded that the extremely high costs associated with implementation of the service required rejection of bidding credits for auctioned DBS licenses.[8] Additionally, the Commission found that ensuring bidders had sufficient funds to purchase licenses and implement service on an expeditious basis would better guarantee delivery of DBS.[9] Similarly, in the Satellite Digital Audio Radio Service ("DARS") auction, the Commission concluded that no special provisions for designated entities would be made because of the high implementation costs associated with the service.[10]

Like DBS and DARS, ATG services are nationwide in scope and will require a significant initial outlay of capital to implement. The new ATG services will require complete coverage of the entire United States at initiation. An ATG licensee cannot market and sell its

---

Order, 11 FCC Rcd 9712, 9777-78, ¶ 162 (1995) ("*DBS Order*").

[6] H.R. Rep. No. 103-111, 103rd Cong., 1st Sess., at 254.

[7] *See Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission's Rules, Amendment of Parts 1 and 22 of the Commission's Rules to adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service, Application of Verizon Airfone Inc. for Renewal of 800 MHz Air-Ground Radiotelephone License, Call Sign KNKG804*, Report and Order and Notice of Proposed Rulemaking, FCC 04-287, ¶ 173 (rel. February 22, 2005).

[8] *See DBS Order* at 9798-99, ¶ 214.

[9] *Id.* at 9799, ¶ 215.

[10] *See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Band*, Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754, 5824-25, ¶ 175 (1997) ("*DARS Order*").

service to airline and general aviation customers on a localized or regional basis. ATG customers expect and require that such service, whether voice or data transmission, will work with reasonable consistency and continuity during the entirety of their flight without any arbitrary use restrictions. Therefore, an ATG operator will have to construct an expansive nationwide system of ground stations and will have to design, test, and install equipment onboard aircraft.

As the Commission is aware, narrowband ATG has been a declining service. Of the available six narrowband ATG licenses, only one operator, Airfone, holds a license and continues to provide service.[11] While Airfone anticipates that broadband ATG services will be more successful, their deployment will require substantial investments in capital and other resources. Companies that win the ATG auction licenses will face significant risks to build a broadband ATG business that can be profitable.

AirCell acknowledges that *none* of the bidding credits authorized in the past has yielded a small business auction winner for a nationwide services license.[12] While AirCell argues that this is due to the relative smallness of the bidding credits offered, in reality, it demonstrates that the provision of a nationwide service requires extensive capital and, as the Commission recognized in the DBS and DARS context, bidding credits will not successfully mitigate this fact.

AirCell and Space Data have not provided any meaningful factual foundations for an appropriate small business threshold for ATG service. Space Data simply claims that because at least two small businesses have shown serious interest in the ATG spectrum, the Commission

[11] AirCell claims that small businesses face a disadvantage because Airfone provides "sharply discounted" ATG calls to Verizon Wireless customers. AirCell Comments at 6. As Airfone has explained previously, Airfone has long been willing to enter into the same type of arrangements with other terrestrial wireless carriers to integrate ATG service with terrestrial wireless service.
[12] *See* AirCell Comments at 3.

should embrace and even increase the proposed level of bidding credits.[13] AirCell claims that the greatest challenge is not implementation costs but the upfront costs of purchasing an ATG license.[14] However, neither Space Data nor AirCell has attempted to quantify the costs associated with implementing a truly nationwide ATG service.

Neither AirCell's nor Space Data's descriptions of their current operations provide the necessary record. AirCell points to its non-nationwide, piecemeal service that encompasses over "a hundred cell sites" but has not quantified the actual costs associated with this effort or compared these costs to the cost of deploying a nationwide, broadband-capable ATG service.[15] Space Data describes its moderate, regional-based network as an ATG delivery mechanism but again fails to provide the costs associated with deploying such a network nationwide.[16] This failure to provide meaningful cost estimates and data supporting a need for bidding credits compels the Commission, consistent with the DARS precedent, to reject the AirCell and Space Data requests.

Similarly, the precedents cited by Space Data and AirCell do not support the adoption of any bidding credits, much less the elevated level of credits they seek. Space Data and AirCell cite licenses granted that were not truly nationwide, and spectrum associated with these licenses that is not comparable the ATG service.

AirCell points to the Commission's offer of bidding credits for spectrum licenses in the 1670-1675 MHz band and the 220-222 MHz ("220 MHz") band.[17] Neither of these spectrum bands was actually a nationwide service. The 1670-1675 MHz spectrum was licensed as a single

[13] *See* Space Data Comments at 6.
[14] *See* AirCell Comments at 4.
[15] *Id.*
[16] *See* Space Data Comments at 4.
[17] *See* AirCell Comments at 3.

block of 5 MHz of spectrum.[18] Generally, spectrum licenses for mobile services have been authorized in a paired fashion, with spectrum for mobile transmissions separated from the spectrum authorized for fixed, base station transmissions. The lack of paired spectrum greatly diminished the value and viability of the 1670-1675 MHz band, a point demonstrated by the general lack of interest in the license and the small sum of less than $13 million bid for the license.[19] Moreover, while ostensibly "nationwide," the 1670-1675 MHz spectrum is required to protect vital federal government communications facilities at three locations: Wallop's Island, VA, Greenbelt, MD, and Fairbanks, AK.[20] This requirement precluded operations in the Washington, DC, and Baltimore, MD markets, effectively rendering the license non-nationwide, and further diminishing the spectrum's value.

Similarly, the 220 MHz spectrum licenses cited by AirCell were not deployed in a nationwide fashion, nor was there any expectation by the Commission that they would be. Initially, the spectrum associated with each 220 MHz license was limited to 200 kHz of paired spectrum.[21] In contrast, even the smallest possible ATG license encompasses five times this amount of spectrum. Further, there were significant numbers of incumbent 220 MHz licensees that were small or very small businesses as defined by the Commission; these incumbents operated on a regional or localized bases. The Commission supported the licensing of the additional 220 MHz spectrum to incumbents to enhance their service offerings. To date, no 220 MHz licensee has constructed and operated a nationwide network in this spectrum band.

---

[18] *See* 47 C.F.R. § 27.11(g) (2005).
[19] *See* FCC Auctions: Summary: Auction 46, *at* http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=46.
[20] *See* 47 C.F.R. § 2.106, n.US362 (stating that any operations within 100 km of these locations must coordinate and protect the government operations).
[21] *See*FCC Auctions: Factsheet: Auction 18, *at* http://wireless.fcc.gov/auctions/default.htm?job=auction_factsheet&id=18 .

Space Data cites the local multipoint distribution service ("LMDS") auction and the 39 GHz auction as instances in which increased bidding credits were provided.[22] Both of these auctions, however, involved non-nationwide licenses,[23] and both require less equipment and smaller amounts of initial capital in order to begin providing service than a nationwide ATG license. Further, both of these services are subject to severe physical restrictions, making them suitable for fixed point-to-point services rather than mobile services. Services in the LMDS and 39 GHz bands operate well only under ideal circumstances (no rain, clouds or other signal disruptions), and are limited to approximately a 1-2 mile service distance.[24] These physical limits effectively preclude deployment of a nationwide network because of the extraordinary numbers of fixed base stations that would be required.

None of the spectrum bands and licenses cited by AirCell and Space Data are comparable to the ATG service and they do not support the grant of bidding credits in the ATG auction. The ubiquitous, costly nature of the ATG service is far more closely related to the DBS and DARS precedents than to the examples proffered by AirCell and Space Data.

II. CONCLUSION

The Commission should not adopt bidding credits for designated entities in the ATG auction. The Commission's first responsibility, given the limited spectrum available, is to ensure that the winning bidder in the auction has sufficient capital to construct, maintain, and promote a nationwide ATG system. ATG service's nationwide, cost-intensive nature is consistent with the

[22] *See* Space Data Comments at 6 n.13.
[23] *Public Notice*, "Auction of Local Multipoint Distribution Service," DA 97-2081, 1 (rel. Sept. 25, 1997) (noting that licenses for LMDS "will be offered in each of 493 BTAs and BTA-like areas in the United States"); *Public Notice*, "Auction of License for Fixed Point-to-Point Microwave Services in the 38.6 to 40.0 GHz (39 GHz) Band," DA 00-112, 5 (rel. Jan. 21, 2000) (noting that "licenses available in this auction consist of fourteen 100 megahertz licenses (paired 50 megahertz channel blocks) in each of 172 Economic Areas (EAs) and 3 EA-like areas").
[24] *See e.g.*, *http://www.shorecliffcommunications.com/magazine/volume.asp?Vol=39&story=365*
.

criteria established for the auctioning of spectrum licenses without bidding credits.

Respectfully submitted,

(Electronically Filed)

Of Counsel:
Michael E. Glover

Karen Zacharia
Leslie V. Owsley
Verizon Airfone
1515 North Court House Road
Suite 500
Arlington, Virginia 22201
(703) 351-3158

R. Michael Senkowski
David E. Hilliard
Wiley Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006
(202)719-7000

Counsel for Verizon Telephone Companies

May 13, 2005